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NO. 85-1408

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

LOCAL 710, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,

Petitioner,

v.

ROBERT J. McGINNIS, et al.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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COUNTERSTATEMENT OF THE CASE

Because, through omission and misstatement, petitioner distorts the record, respondents submit this counterstatement.

Petitioner is a local labor organization, but it has nationwide jurisdiction. Although petitioner admitted below that some 18% of its 15,000 members live and work more than 150 miles from its Chicago meeting hall, respondents estimate that at least 25%, and possibly 40%, of the membership live at least that distance from Chicago. App.4a. Respondents claim, and the Court of Appeals held, that petitioner discriminates against this group of remotely situated members in violation of Title I of the Labor Management Reporting and Disclosure Act (LMRDA) by requiring them to come to Chicago to vote on union referenda and to participate in union meetings.

In late 1982 and early 1983, respondents and other Local 710 members sought to amend the Local's by-laws to provide for the direct election of stewards, rather than their appointment by the Secretary-Treasurer of Local 710, William Joyce. Joyce opposed the amendment.

Because the remotely situated members received inadequate representation from the Chicago-oriented union, they were the most ardent supporters of the amendment. See, e.g., Aff. of Dale Hammer. In early 1983, 433 members residing more than 150 miles from Chicago signed petitions supporting the amendment and requesting that petitioner provide them some feasible means of voting on the amendment. App.4a. Respondents presented these petitions to the union prior to the April 1983 vote on the amendment.

Despite this dramatic demonstration of interest (or perhaps because of it), petitioner ignored the petitions and refused to exercise its power under Article 18 of its by-laws to hold membership meetings on a regional or other basis "so as to permit the membership to attend meetings and to express their views and otherwise exercise their rights as members." App.3a. Most other large Teamster locals accommodate their dispersed members in some fashion. App.14a.

Only some 500 members attended the April 1983 Chicago meeting at which the amendment was considered. Petitioner's exclusion of the geographically remote members was critical to the Joyce group's success in defeating the amendment.

It is undisputed that petitioner's policy of requiring the remote members to travel to Chicago to vote in union referenda

and to participate in union meetings has the effect of disenfranchising those members.

Contrary to petitioner's claim that the Court of Appeals found no discrimination, it held that petitioner's policy subjected the geographically remote members to disparate treatment, and that the "union requirement of in-Chicago voting on by-law amendments is discriminatory." (emphasis supplied). App.9a. The Court properly posed the issue as "whether the union rule as applied resulted in disparate treatment," App.8a., and rejected any "superficial inquiry" which would uphold the union's policy simply because all members were in theory equally required to come to Chicago to vote.

The Court then carefully considered the union interests purportedly advanced by the Chicago-only policy and found the union's rationales "not persuasive." App.12a.

Because the Court held for respondents on their section 101(a)(1) claim, it did not reach their separate claim under section 101(a)(2).

SUMMARY OF THE ARGUMENT

The Court of Appeals holding that petitioner discriminated against its geographically remote members and effectively disfranchised them by requiring only their group, which consists of some 25-40% of the Local Union's membership, to travel some 300 miles to vote in Chicago on union referenda does not conflict with any decisions of this Court or of any Court of Appeals. The Court of Appeals considered the purported justification for petitioner's exclusionary practice, taking proper notice of the general policy against judicial interference in unions' internal affairs, and correctly found those justifications not persuasive.

REASONS FOR DENYING PETITION

1. The Court of Appeals correctly held that petitioner discriminated against its geographically remote members in violation of Title I by requiring only that group to travel some 300 miles to vote in Chicago on union referenda while not imposing any such hardships on its Chicago members who are generally more supportive of petitioner's incumbent leadership.

Contrary to what petitioner asserts, Local 710 discriminates against a de facto class of its members -- those remotely situated from the union hall in Chicago -- by its policy of permitting only in-Chicago voting on union referenda. Because this policy effectively precludes some 25% to 40% of petitioner's membership from voting, respondents consistently asserted in the courts below that petitioner's policy discriminates, on its face and in its application, against the remote members.

Petitioner misrepresents when it states to the contrary.

Petitioner's semantic manipulations should not deflect this Court's attention from the lucid analysis of the Court of Appeals of the union's discriminatory treatment of this substantial, albeit fluid, group of members. As the Court of Appeals recognized, the union's policy does not treat all its members equally. The remote members cannot feasibly attend the Chicago meetings; the Chicago members can do so without any material hardship. By refusing to hold regional meetings or otherwise accommodate the remote members, petitioner favors its Chicago members, who are disproportionately supportive of petitioner's incumbent leadership. By refusing to exercise its discretion under its by-laws to permit active participation by the remote members, petitioner intentionally

limits effective participation to Chicago area members.

For petitioner to suggest that this rule is "neutral" because evenly applied is an empty verbalism. The courts long ago rejected such semantic sophistry recognizing that Title I guarantees a meaningful or effective right to vote and not just "the mere naked right to cast a ballot." Bunz v. Moving Picture Mach. Operators' Union, 567 F.2d 1117, 1121 (DC Cir. 1977)(collecting cases).

Although the decision below is apparently the first to apply well-settled Title I principles to this relatively unusual factual setting,*1 its holding comfortably

*1 Petitioner's blanket assertion that the decision below "jeopardizes" the rules of other local unions is not supported in the record. In fact, the uncontradicted record evidence suggests that petitioner's exclusionary policy is rare in locals of its size and character. App.14a.

conforms with precedent. In a variety of contexts, courts have struck down union practices which empty the right to vote of meaning, even where the challenged union practice is facially neutral and does not in terms discriminate against classes of members. See, e.g., Blanchard v. Johnson, 532 F.2d 1074 (CA 6), cert. denied, 429 U.S. 869 (1976)(union violates section 101(a)(1) by denying all its members adequate information about affiliation proposal on ballot); Christopher v. Safeway Stores, Inc., 644 F.2d 470 (CA 5 1981) (section 101(a)(1) violated even where union denies all members right to vote); accord, Trail v. IBT, 542 F.2d 961 (CA 6 1976). As discussed above, however, petitioner's policy is even more pernicious in that it burdens the right to

vote for only a discrete group of its membership.*2

Calhoon v. Harvey, 379 U.S. 134 (1964) is not to the contrary. Unlike in Calhoon, petitioner's policy restricts a class of members from the activity of voting itself by precluding access to the place of voting and does not implicate Title IV. Moreover, in Calhoon this Court did not consider whether the union rule was discriminatory in effect;

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*2 Contrary to petitioner's claim, this Court, and presumably Congress in enacting the LMRDA, was fully cognizant that rules which appear to treat all potential voters equally could be used to disenfranchise discrete groups within the electorate, such as Blacks. See, e.g., Lane v. Wilson, 307 U.S. 268, 275 (1939)(the Fifteenth Amendment "nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestrained as to race.")

the "complaining members have not been discriminated against in any way." (emphasis supplied). Id. at 139. Because in Calhoon "in substance the claims alleged violations of Title IV rather than Title I," Local 82, Furniture Moving Drivers v. Crowley, ___U.S.___, 52 L.W. 4757 (June 12, 1984), its holding is of limited relevance to pure Title I cases. See, e.g., Turner v. Dempster, 743 F.2d 1301, 1302 (CA 9 1984); Bunz, supra, at n.31.

The Court of Appeals decision does not conflict with Gurton v. Arons, 339 F.2d 371 (CA 2 1964), or the "weighted voting" cases. In Gurton, the union struck down a new by-law amendment which permitted members to vote only in person at union meetings, the policy which petitioner asserts is reasonable.

The Second Circuit after carefully noting that the amendment, although facially

neutral, was "designed to disenfranchise a large majority of the union's members and...would have had that effect" (emphasis supplied), upheld the union's action as reasonable. Because the union action upheld in Gurton broadened its members' ability to participate effectively in union affairs, Gurton offers no support to petitioner's conscious policy of disfranchisement.

Because section 101(a)(1) does not apply to delegate representation, Denov v. Chicago Federation of Musicians Local 10-208, 703 F.2d 1034, 1039 (CA 7 1983), the weighted voting decisions need not address the discrimination issue, and have only considered the "reasonableness" of union delegate rules at issue. Id. The courts have upheld convention representation systems as reasonable if "some meaningful representation is achieved," Id. at 1041, a standard which

petitioner's exclusionary policy cannot satisfy.

Nor do the other decisions cited by petitioner support its argument that Title I sanctions the effective disfranchisement of substantial portions of a union's membership. Unlike in Alexander v. Intern. Operating En., AFL-CIO, 624 F.2d 1235, 1240 (CA 5 1980), where the court noted that "plaintiffs themselves were not singled out for disparate treatment, nor is there any hint that other union members received better treatment in exercising their union franchise," petitioner's geographically remote members were singled out for inferior treatment. In Nienaber v. Ohio Valley Carpenters Dist. Council, 652 F.2d 1284 (CA 6 1981), the court held that the union's ratification by mail ballot of new by-laws, even though not the ratification procedure provided for in the

existing by-laws, did not violate Title I. All union members were equally affected by the union's deviation from its specified procedures and none were disenfranchised by the mail ballot procedure. Finally, in Stelling v. Intern. Bro. of Elec. Workers, 587 F.2d 1379 (CA 9 1978), where all union members were equally denied the right to vote on ratifying a collective bargaining agreement, no claim was raised that the union's denial adversely affected any particular segment of the union membership. In none of these cases was a discrete segment of the union's membership denied meaningful voting rights granted to any other segment.*3

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*3 In Molina v. Union de Trabajadores De Muelles, 762 F.2d 166 (CA 1 1985), the court held any Title I claim precluded by Title IV.

Petitioner's reliance on Title I's notoriously opaque legislative history is equally unpersuasive. Crowley, supra, at n.17. Although Senator McClellan intended Title I to prohibit union rules creating de jure classes with unequal voting rights, the legislative history does not suggest that he sanctioned practices such as that challenged in this case which are equally effective in disfranchising union members and discouraging rank and file participation.

Petitioner's inferences from Senator McClellan's proposals that union meetings be held regularly and that union officers be elected at a general membership meeting are unfounded. Both proposals were rejected. More importantly, their purpose was to expand membership participation, a goal which petitioner's rule undermines. Title IV, as enacted, recognized that providing all members

"a reasonable opportunity" to vote for union officers is a more flexible method to ensure full membership participation, and the Secretary of Labor has determined that to effectuate that purpose may "require establishing multiple polling places or the use of a mail ballot referendum when the members are widely dispersed." 29 C.F.R. §452.94. These shreds of legislative commentary on rejected precursors to section 101(a)(1), which are at best tangential to the issue presented in this case, are entitled to minimal weight, especially when they are advanced in support of practices which conflict with Title I's broad legislative purpose of promoting membership participation in union affairs.

2. The Seventh Circuit's decision does not conflict with Steelworkers v. Sadlowski, 457 U.S. 102 (1982).

The petitioner argues that the Court of Appeals used a balancing test and Sadlowski did not. In fact, the test used in Sadlowski was the same kind of analysis in which the Court engaged in below. We need not even reach the point, however, because Sadlowski involved section 101(a)(2) and this Court's discussion of that section's proviso does not govern the interpretation of the proviso to section 101(a)(1).

In each case, the courts identified the union interests purportedly advanced by the challenged rule and the rule's impact on members' rights protected under Title I. In Sadlowski, this Court found that the union interest, preventing outsider influence, was significant, and that the rule was properly

tailored to achieve its purposes. The Court then found that "as a practical matter the impact may not be substantial" on rights protected by the statute. Id. at 113. In contrast, the Court of Appeals found petitioner's policy had a substantial impact on members' rights and its purported justification was unreasonable. The Court found petitioner's interest in promoting face-to-face discussion legitimate; but it also found petitioner's rule did not advance that interest because the remote members could not attend meetings to engage in face-to-face discussion. The so-called justification for the rule was irrational. App.12a.

The approach by Court of Appeals conforms with that of other post-Sadlowski decisions. Knox County Local v. National Rural Letter Carrer Assn., 720 F.2d 936 (CA 6 1984)("union prohibition of free speech must

not be unreasonable"); Turner v. Dempster, 569 F.S. 683, 690 (ND Cal. 1983), aff'd, 743 F.2d 1301 (CA 9 1984). The petitioner's proposed minimal-rationality test would effectively gut any protections provided by section 101(a)(1) because, much as with equal protection challenges to economic legislation, almost any union rule can be justified as advancing some arguably legitimate purpose or

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*4 Senator McClellan viewed the provisos to section 101(a)(1) and (2) as placing the same limitations on the affirmative grant of rights as was "implicit in the Bill of Rights of the Federal Constitution to prevent abuses." II Legislative History of the Labor-Management Reporting And Disclosure Act of 1959 (NLRB ed. 1959, page 1294). As such, reasonableness requires more than the mere articulation of some rationale for a union rule which so drastically curtails Title I protected activities.

being related to it. The rights guaranteed by Title I are in the nature of first amendment rights. If those rights are to have any meaning at all, they should not be swallowed by the proviso. Knox County, supra, at 939.*4

Sadlowski suggests that an intermediate standard of scrutiny is appropriate, and the Court of Appeals, under the rubric of its "balancing" test, subjected petitioner's policy to such heightened scrutiny.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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